

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

FRANK WEBB, Jr., )  
 ) C.A. No. 04C-06-007 (JTV)  
 Plaintiff, )  
 )  
 v. )  
 )  
 WILMINGTON TRUST COMPANY, )  
 and DOROTHY W. KNOEBEL, )  
 administratrix of the estate of LOIS )  
 M. WILSON, )  
 )  
 Defendants. )

*Submitted: September 11, 2009*

*Decided: October 22, 2009*

John J. Sullivan, Jr., Esq., Sanclemente & Associates, LLC, Bear, Delaware.  
Attorney for Plaintiff.

David J. Ferry, Jr., Esq., Ferry, Joseph & Pearce, P.A., Wilmington, Delaware.  
Attorney for Defendant Wilmington Trust Company.

James A. Yori, Esq., Fuqua and Yori, P.A., Georgetown, Delaware. Attorney for  
Defendant Dorothy Knoebel.

*Upon Consideration of Defendants'  
Motions For Summary Judgment*

**GRANTED**

**VAUGHN, President Judge**

**ORDER**

Upon consideration of the motions for summary judgment filed by defendants Wilmington Trust Company and Dorothy W. Knoebel,<sup>1</sup> the plaintiff's opposition, and the record of the case, it appears that:

1. This case arises from a dispute concerning four<sup>2</sup> certificates of deposit belonging to Lois Wilson. Ms. Wilson died on March 16, 2004. On the date of her death, the certificates were in joint names of her and the plaintiff, Frank Webb, Jr. The defendants contend that the plaintiff's name was added to the accounts a few days before Ms. Wilson's death, at a time when she was incompetent to add a name to her certificates. They contend that the certificates should go to Ms. Wilson's estate, and, in fact, after her death the funds represented by the certificates were paid to her estate. The plaintiff admits that Ms. Wilson was incompetent in March 2004, but contends that his name was added at an earlier time when she was competent. He contends that the certificates should go to him as surviving joint tenant.

2. Wilmington Trust Company contends that the plaintiff visited a branch office, without Ms. Wilson, on March 10, 2004, and asked to have his name placed on the accounts. It further contends that the plaintiff was given account cards and related paperwork, and instructed to have Ms. Wilson sign those documents

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<sup>1</sup> Ms. Knoebel's motion is styled as a motion to dismiss, but is treated here as a motion for summary judgment.

<sup>2</sup> Some papers filed in the case refer to the number of accounts as five, but the bank records themselves seem to establish the number of accounts at four. Any remaining ambiguity about the number of accounts involved does not bear upon the Court's analysis or its reasons for granting summary judgment as the material facts appear to be the same for all accounts.

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authorizing him as a co-owner. It further contends that the plaintiff returned on March 12, 2004 with the cards and paperwork which appeared to have been signed by Ms. Wilson. It further contends that a Wilmington Trust Company employee notarized the documents, despite not witnessing Ms. Wilson's signing. Shortly after Ms. Wilson's death, the personal representative of her estate went to Wilmington Trust Company to close out Ms. Wilson's bank accounts and transfer the funds to the estate. At that time, Wilmington Trust Company investigated the circumstances surrounding the addition of Webb's name and made a decision to disburse the funds to the estate, not the plaintiff.

3. The plaintiff disputes Wilmington Trust Company's version of the facts. He contends that any forms that may have been signed in that week prior to Wilson's death were signature cards that facilitated "Webb's ability to write checks to pay bills for [Wilson]." <sup>3</sup> The plaintiff testified in his deposition that his name had been added to the accounts at some unspecified time well prior to Wilson's death, perhaps in 2003. <sup>4</sup> Finally, he contends that Wilmington Trust Company's investigation of the

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<sup>3</sup> Pl. Opp'n. Mot., D.I. 92, at ¶ 2.

<sup>4</sup> Def. Wilmington Trust Company's Mot. Summ. J., D.I. 89, Ex. C (Webb Deposition 44:1 - 10; 56:9 - 19):

Q. (Attorney): Alright, how much sooner than March 10 of '04 do you think [you were added to the accounts]? Try to, you know, at least give me an estimate. Did it happen in 2004, or did it happen in some prior year?

A. (Webb): I would be afraid to say, to be honest, though to tell you the honest truth, but I imagine it was back in 2003 sometime, because she was in good shape then.

Q: Okay, do you think this was done in 2003?

A. Or sooner than that, it could be.

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documents in question was negligent, and that the funds should never have been transferred to the estate.

4. The point in time when the plaintiff's name was added to the accounts is the primary issue raised by the motions. During the plaintiff's deposition, he admitted that she was unable to sign in March 2004:

Q. (Attorney): Let me ask you one other thing that you brought up on cross. I think you said that on March 10, 2004 [Wilson] wasn't in any shape. What do you mean by that?

A. (Webb): I mean she wasn't for to sign anything, March 10.

Q: March 10, she wouldn't have been able to sign?

A: No.

Q. By that, you mean she just wasn't healthy enough or  
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A: No, nuh-uh.

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Q: When did you sign this document?

A: I don't know when I signed it.

Q: Do you know when [Wilson] signed it?

A: She signed it the same time I did.

Q: Ok, it says March 12, 2004.

A: No.

Q: That isn't when it was signed?

A: (Shaking head negatively).

Q: Any idea when it was signed?

A: No, I don't. A good while before that. I can tell you that much.

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Q: -- she couldn't have signed anything?

A: No, no.

Q: She didn't sign anything after March 10?

A: No, nuh-uh

Q: Didn't sign anything March 12?

A: Got worse all the time. No.

Q: Okay, and she wasn't in a position to be able to sign anything? Is that what you are saying?

A: Nuh-uh.<sup>5</sup>

5. Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.<sup>6</sup> In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.<sup>7</sup> Summary judgment is inappropriate when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the

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<sup>5</sup> Def. Wilmington Trust Company's Mot. Summ. J., Ex. C (Webb Deposition 107:5 - 24). *See Id.* (Webb Deposition 104:15 - 105:3) (containing more evidence of Wilson's lack of capacity; specifically Webb stating that Wilson was bedridden and very ill up to two weeks prior to her death).

<sup>6</sup> Super. Ct. Civ. R. 56(c).

<sup>7</sup> *Pierce v. Int'l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

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circumstances.<sup>8</sup>

6. Wilmington Trust Company's motion for summary judgment is supported by an affidavit of one of its employees, Allison A. Berl, a paralegal who is also a records custodian. Attached to her affidavit are numerous bank records relating to the certificates.

7. The affidavit and attached bank records are quite detailed and will only be summarized here. The affiant states that she reviewed the records at issue in this case; specifically the account records for the certificates of deposit. She discusses four types of documents associated with each separate account: Ms. Wilson's application for each certificate or the original certificate; the substitute certificate applications that added the plaintiff's name; interest checks issued to Ms. Wilson; and account statements. She concludes that "the CDs in question were in the sole name of the decedent, [Ms. Wilson], until March 2004, at which time the name of the plaintiff, [Mr. Webb], was added to the accounts."<sup>9</sup>

8. The affiant details the content and meaning of each type of document. She explains that all of the original certificate applications and original certificates showed that Ms. Wilson was the only owner of the certificates when issued, that the plaintiff's name was not on the certificates, and that the four accounts were opened

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<sup>8</sup> *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 WL 404771, at \*1 (Del. Super.).

<sup>9</sup> Berl Affidavit at ¶ 2.

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between the years of 1989 - 2001.<sup>10</sup> Regarding the substitute applications, the affiant describes their meaning as follows:

The first document that reflects Mr. Webb's name was the Substitute CD Application (Attachment B) completed on March 12, 2004, as indicated on the signature line of the Substitute CD Application. The CDs and Retirement Savings Department date stamped the Substitute Certificate Application when they received it on March 16, 2004. A handwritten notation made by [the same Department's] personnel on the back of the Substituted Certificate Application on March 17, 2004 states "Rec's sub & memo to add Frank Webb Jr. 3/17/04."<sup>11</sup>

The affiant also describes the interest checks issued to Wilson as "evidence of her sole account ownership"<sup>12</sup> because "[a]ll interest checks must be issued exactly as the Certificate is titled."<sup>13</sup> She included as attachments fifteen copies of physically deposited interest checks - with dates ranging from the beginning of 2001 to near the end of 2003 - all containing only Ms. Wilson's name and signature.<sup>14</sup> Finally, the affiant describes the monthly account statements as indicating "that the account was solely in Ms. Wilson's name until the March 2004 statement, which is the first

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<sup>10</sup> See Berl Affidavit attachments A, E, H, and K.

<sup>11</sup> Berl Affidavit at ¶ 4. See *Id.* ¶¶ 10, 15, and 20 for similarly worded descriptions. See Berl Affidavit attachments B, F, I, and L for copies of each substitute application.

<sup>12</sup> Berl Affidavit at ¶¶ 6, 12, 17, and 22.

<sup>13</sup> *Id.*

<sup>14</sup> See Berl Affidavit attachments C, G, J, and N.

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statement on which Mr. Webb's name appears. . . . If Mr. Webb had been a joint owner on the CD's or on Ms. Wilson's checking or saving accounts, his name would appear in the address."<sup>15</sup> She included a sampling of Ms. Wilson's account statements from periods in 2002, 2003, and 2004, and the only statement that included both Ms. Wilson's and the plaintiff's name was for the period of 2/20/04 - 3/23/04, a time period that included the events of March 10 through March 12.<sup>16</sup>

9. The plaintiff responds to the affidavit submitted by Wilmington Trust Company in two ways. First, he included in his opposition to the motion the following response: "Denied that affidavit establishes beyond reasonable doubt that Plaintiff's name was not added to the accounts until March 2004. Plaintiff asserts that Ms. Berl's affidavit establishes the procedure that [Wilmington Trust Company] should have followed to ascertain the ownership of the [CDs] before disbursing the funds to [Knoebel]."<sup>17</sup>

10. Second, the plaintiff has focused on an alleged discrepancy in Wilmington Trust Company's argument and evidence. At oral argument, the plaintiff presented to the Court what he claimed were original CD certificates showing him as a co-owner. He presented these certificates to demonstrate an alleged flaw in Wilmington Trust Company's argument. Wilmington Trust Company has contended that the certificates which the plaintiff claimed were originals were in fact substitute

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<sup>15</sup> Berl Affidavit at ¶¶ 7, 23.

<sup>16</sup> See Berl Affidavit attachments D and O.

<sup>17</sup> Pl. Opp'n. Mot. at ¶ 6.

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certificates. It based this contention on two unique characteristics of substitute certificates that differentiate them from original certificates; first, that substitute certificates are printed on pre-numbered stock-paper which have in small type the actual number of the account next to a large pre-printed number, and second, that the pre-printed number would be crossed out by a red line. Wilmington Trust Company stated that an original certificate would not contain either of those characteristics. The plaintiff presented to the Court a number of certificates that contained both Ms. Wilson's and his name, but lacked the characteristic red line. The certificates did, however, contain in small type the actual number of the account next to the large pre-printed number.<sup>18</sup>

11. The burden-shifting analysis of Super Ct. Civ. R. 56(e) is applicable in this case.<sup>19</sup> The moving party bears the burden of establishing the non-existence of material issues of fact.<sup>20</sup> If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.<sup>21</sup> If the moving party produces an affidavit or other sufficient evidence in support of its motion and the burden shifts, the non-moving party may not just point to its pleadings, but must

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<sup>18</sup> While the Court is not entirely certain about this, it believes that copies of the certificates that plaintiff provided to the Court at oral argument were attached as exhibit 1 of plaintiff's response to WTC's *first* motion for summary judgment. See Pl. Opp'n. Mot., D.I. 82, Ex. 1. After oral argument, plaintiff did not leave with the Court either the actual certificates or copies of them.

<sup>19</sup> See Super. Ct. Civ. R. 56(e).

<sup>20</sup> *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at \*1 (Del. Super.).

<sup>21</sup> *Id.*

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set forth evidence showing that a genuine issue of material fact remains for trial.<sup>22</sup> The issue of material fact must be the subject of a truly genuine dispute, and not just a disagreement between two adverse parties.<sup>23</sup> “If the moving party demonstrates a failure of proof by the non-moving party, then there is no genuine issue of material fact and summary judgment may be granted.”<sup>24</sup>

12. I have carefully examined in detail the affidavit of Wilmington Trust Company’s paralegal and records custodian, and they appear to show, conclusively, that Mr. Webb’s name was added to the accounts in question on March 10-12, 2004. Wilmington Trust Company has met its burden by establishing that there is no genuine issue of material fact on this point. Particularly persuasive are the interest checks and account statements, which plainly show that Ms. Wilson was the only owner of the accounts up until March 2004. The affidavit and its accompanying documentary evidence also put to rest a question which existed earlier in the litigation about the term “issue date” by conclusively showing that the term refers to the time when the CD was last rolled over and not when the additional co-owner was added. By meeting its burden, Wilmington Trust Company has shifted the burden to the plaintiff.

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<sup>22</sup> *Brown v. Delaware Div. of Social Services, Dept. of Health and Social Services*, 2009 WL 2620729, at \*3 (Del. Super.) (citing Super. Ct. Civ. R. 56(e)); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-38 (1986)).

<sup>23</sup> *See Lundeen v. Pricewaterhousecoopers, LLC*, 2006 WL 2559855, at \*1, 6 (Del. Super.).

<sup>24</sup> *Id.* at \*5.

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13. The plaintiff fails to meet his burden because he fails to set forth evidence showing that a genuine issue of material fact remains for trial. Simply disagreeing with Wilmington Trust Company's affidavit is not sufficient to meet his burden. While the plaintiff did point out a discrepancy in Wilmington Trust Company's contentions regarding one of the characteristics of a substitute certificate, the other characteristic was present on the plaintiff's claimed original certificate. The plaintiff's contention that this discrepancy creates an issue of fact is unpersuasive. The plaintiff has no adequate response to the conclusive evidence contained in Wilmington Trust Company's affidavit and the attached documents.

14. For the foregoing reasons, the defendants' motions for summary judgment are *granted*.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary  
cc: Order Distribution  
File